

Montana Water Court
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ELECTRONICALLY FILED

41H-5051-S-2020

July 1, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Spencer N Anderson; Vesta F Anderson; NWX
LLC

CASE 41H-5051-S-2020
41H 126871-00
41H 139915-00
41H 30151551
41H 30151552

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within **10 days** of the date of the Master's Report. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this Master's Report. The original objection and a certificate of mailing to all parties on the Service List must be filed with the Water Court. *If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.*

MASTER'S REPORT

On December 15, 2020, Claimant Vesta Anderson filed a letter with the Montana

Water Court, to split her portion of claims 41H 126871-00 and 41H 139915-00. Attached to the letter were deeds showing a transfer of the water rights and underlying property. On April 8, 2021, Spencer Anderson submitted proposed abstracts for the splits and indicated that the proposal was unopposed by the other claimants. Parties also submitted a map documenting the new places of use for the water rights. The submitted documents and maps provide sufficient information to accurately split the claims' ownership and elements and create two new claim numbers. The Findings of Fact below set out the agreed upon parameters of these ownership splits.

FINDINGS OF FACT

1. Based on the filings received from Claimants, two new water right claim numbers should be created from the two above referenced parent claims.
2. From parent claim 41H 126871-00, claim 41H 30151551 should be created. The original claim number shall stay in the name of the Claimants Vesta F Anderson and Spencer N Anderson. New claim number 41H 30151551 shall be NWX LLC's portion of the original claim.

3. The elements for claim 41H 126871-00 that changed after the split are:

OWNER: Vesta F Anderson, Spencer N Anderson

FLOW RATE: ~~3.75 CFS~~ **2.68 CFS**

MAXIMUM ACRES: ~~560.0~~ **400**

PLACE OF USE:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	320.00 160.00		N2 NW	4	2S	5E	GALLATIN
2	80.00		E2NE	5	2S	5E	GALLATIN
3	160.00		SE	33	1S	5E	GALLATIN
Total:	560.00 400.00						

4. The elements of new claim 41H 30151551 are the exact same as parent claim 41H 126871-00 except the following elements:

OWNER: NWX LLC

FLOW RATE: ~~3.75 CFS~~ **1.07 CFS**

MAXIMUM ACRES: ~~560.0~~ 160

PLACE OF USE:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	320.00 160.00		N2 NE	4	2S	5E	GALLATIN
2	80.00		E2NE	5	2S	5E	GALLATIN
3	160.00		SE	33	1S	5E	GALLATIN
Total:	560.00 160.00						

5. The following remark should be added to the abstract of claim 41H

126871-00:

SPLIT CLAIM NUMBER 41H 30151551 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

6. The following remarks should be added to the abstract of claim 41H

30151551:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 126871-00.

7. From claim number 41H 139915-00, claim number 41H 30151552 is created. Claim 41H 139915-00 shall stay in the name of the Claimants Vesta F Anderson and Spencer N Anderson. New claim number 41H 30151552 shall belong to NWX LLC.

8. The elements for claim 41H 139915-00 that changed after the split are:

OWNER: Vesta F Anderson, Spencer Anderson

FLOW RATE: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

THE FOLLOWING RIGHTS SHARE A FLOW RATE: 41H 139915-00, 41H 30151552

POINT OF DIVERSION:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2SE	33	1S	5E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		W2W2NE	4	2S	5E	GALLATIN
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~~**Period of Diversion:** JANUARY 1 TO DECEMBER 31~~
~~**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE~~

PLACE OF USE:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2SE	33	1S	5E	GALLATIN
2			W2W2NE	4	2S	5E	GALLATIN

9. The elements of new claim 41H 30120522, after the split, are:

OWNER: NWX LLC

FLOW RATE: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

THE FOLLOWING RIGHTS SHARE A FLOW RATE: 41H 139915-00, 41H 30151552

POINT OF DIVERSION:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2SE	33	1S	5E	GALLATIN

~~**Period of Diversion:** JANUARY 1 TO DECEMBER 31~~
~~**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE~~

1 2		W2W2NE	4	2S	5E	GALLATIN
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Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE

PLACE OF USE:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2SE	33	1S	5E	GALLATIN
1 2			W2W2NE	4	2S	5E	GALLATIN

10. The following remarks should be added to the abstract of claim 41H 139915-00:

SPLIT CLAIM NUMBER 41H 30151552 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

11. The following remarks should be added to the abstract of claim 41H 30151552:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 139915-00.

CONCLUSIONS OF LAW

1. The Montana Water Court has jurisdiction over all matters relating to the determination of existing water rights and may consider any matter within the Court's jurisdiction on its own motion, or on the motion of an interested party. Section 3-7-224, MCA.

2. Montana law allows claimants to amend their statements of claim, and objectors to amend their timely filed objections after the objection period in a basin has closed. Motions to amend a claim or objection are governed by Section 85-2-233(6), MCA:

(6) After the issuance of a temporary preliminary decree or preliminary decree, notice of any motion to amend a statement of claim or a timely filed objection that may adversely affect other water rights must be published for 3 consecutive weeks in two newspapers of general circulation in the basin where the statement of claim or objection was filed. The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice. The water judge may order any additional notice of the motion as the water judge considers necessary. The cost of notice required pursuant to this subsection must be borne by the moving party.

3. The splitting of claims 41H 126871-00 and 41H 139915-00 does not constitute an increase to any of the claims' elements. The split only serves to reflect, more accurately, the current proportional ownership of the claimed places of use and flow rates. As a result, the notice requirements found in Section 85-2-233(6), MCA do not apply.

4. A properly filed Statement of Claim for Existing Water Right is prima facie

proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves an element of the prima facie proof is incorrect. This is the standard of proof for every assertion that a claim is incorrect including claimants objecting to their own claims. Rule 19, W.R.Adj.R.

5. The evidence entered into the record regarding the current ownership of the claimed place of use and flow rate is sufficient to accurately split claims 41H 126871-00 and 41H 139915-00 as stated in the Findings of Fact.

RECOMMENDATIONS

Therefore, pursuant to section 85-2-233(6), MCA and Rule 15, M.R.Civ.P., it is recommended that the Motion to Split statement of claim 41H 126871-00 and statement of claim 41H 139915-00 be GRANTED.

New Post Decree Abstracts of Water Right Claims 41H 30151551 and 41H 30151552 be created to reflect the proportional use of the above identified co-owners. A color map reflecting the new places of use for the claims is attached to this Report. All Updated Post Decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state's centralized water right record system.

Julia J. Nordlund
Water Master

Service via USPS Mail:

NWX LLC
1735 S 19th Ave Ste B
Bozeman, MT 59718

Kathryn Munro
Silverman Law Office, PLLC
950 North Montana Ave, Suite 1
Helena, MT 59601

Last Order:

Spencer N Anderson
402 E Granite
Bozeman, MT 59718

Service Via Electronic Mail:

Jeremy A Michael
Cusick, Farve, Mattick & Refling, PC
517 S. 22nd Avenue, Suite 5
Bozeman, MT 59718
office@cmrlawmt.gov

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 126871-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: SPENCER N ANDERSON
402 E GRANITE
BOZEMAN, MT 59718

VESTA F ANDERSON
PO BOX 3253
BILLINGS, MT 59103 3253

Priority Date: APRIL 25, 1877

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.68 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT
PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 400.00

***Source Name:** BAXTER CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWSE	4	2S	5E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 4

Diversion Means: HEADGATE

2		SENE	16	2S	5E	GALLATIN
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Period of Diversion: MAY 1 TO OCTOBER 4

Diversion Means: HEADGATE

Period of Use: MAY 1 TO OCTOBER 4

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	160.00		NW	4	2S	5E	GALLATIN
2	80.00		E2NE	5	2S	5E	GALLATIN
3	160.00		SE	33	1S	5E	GALLATIN

Total: 400.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

126871-00

138937-00

SPLIT CLAIM NO. 41H 30151551 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 139915-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SPENCER N ANDERSON
402 E GRANITE
BOZEMAN, MT 59718

VESTA F ANDERSON
PO BOX 3253
BILLINGS, MT 59103 3253

Priority Date: DECEMBER 31, 1918

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE
CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A
DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT
HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

THE FOLLOWING RIGHTS SHARE A FLOW RATE: 41H 139915-00, 41H 30151552

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR
STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER
ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING
CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER
SOURCE.

Source Name: BAXTER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2SE	33	1S	5E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2SE	33	1S	5E	GALLATIN

Remarks:

SPLIT CLAIM NO. 41H 30151552 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 30151551 STATEMENT OF CLAIM
Version: 1 -- ORIGINAL RIGHT
Status: ACTIVE

Owners: NWX LLC
1735 S 19TH AVE STE B
BOZEMAN, MT 59718

Priority Date: APRIL 25, 1877

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.07 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 160.00

Source Name: BAXTER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWSE	4	2S	5E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 4

Diversion Means: HEADGATE

Period of Use: MAY 1 TO OCTOBER 4

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	160.00		NE	4	2S	5E	GALLATIN
Total:	160.00						

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 126871-00.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: **41H 30151552** STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: NWX LLC
 1735 S 19TH AVE STE B
 BOZEMAN, MT 59718

Priority Date: DECEMBER 31, 1918

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE
 CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A
 DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT
 HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

THE FOLLOWING RIGHTS SHARE A FLOW RATE: 41H 139915-00, 41H 30151552

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR
 STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER
 ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING
 CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER
 SOURCE.

Source Name: BAXTER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2W2NE	4	2S	5E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2W2NE	4	2S	5E	GALLATIN

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 139915-00.